Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 11 MARCH 16, 1977 No. 11

This issue contains

T.D. 77–71 through 77–76

C.D 4689

Protest abstracts P77/5 through P77/7

Reap. abstracts R77/9 through R77/11

DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 85 cents (single copy). Subscription price: $43.70 a year; $10.95 additional for foreign mailing.

U.S. Customs Service

(T.D. 77–71)

Presidential Proclamation 4482—Import Restrictions on Dried Milk Mixtures and Exclusion from Import Restrictions for Certain Articles

Presidential Proclamation 4482 amending Headnote 2(b), Part 3, and item 950.19, Appendix to the Tariff Schedules of the United States

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 23, 1977.

There is published below Presidential Proclamation 4482 of January 19, 1977, which amends item 950.19 in the Appendix to the Tariff Schedules of the United States (TSUS) relating to the import restriction on certain dried milk mixtures. The Proclamation also amends Headnote 2(b), Part 3 of the Appendix to the TSUS relating to the exclusion from import restrictions of certain articles imported as samples, for personal use or for research. The following Proclamation was published in the FEDERAL REGISTER on January 24, 1977 (42 FR 4309). (049713)

(CLA–2–R:CV:S)

DONALD W. LEWIS,
for LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

THE PRESIDENT

Proclamation 4482 **January 19, 1977**

Import Limitation on Dried Milk Mixtures

By the President of the United States of America

A Proclamation

Import quota limitations have been imposed on certain dairy products, including dried milk, pursuant to the provisions of Section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624).

Those limitations are set forth in Part 3 of the Appendix to the Tariff Schedules of the United States, which schedules are hereinafter referred to as TSUS, under items 950.01, 950.02, and 950.03, and relate to products classified for tariff purposes under items 115.45, 115.50, 115.55, 115.60, and 118.05 of Schedule 1 of the TSUS.

The Secretary of Agriculture advised me that he had reason to believe that dried milk, containing not over 5.5 percent butterfat by weight, mixed with other ingredients (hereinafter referred to as dried milk mixtures) and thus classified for tariff purposes under items of the TSUS other than the items referenced above, are being, or are practically certain to be, imported under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or to reduce substantially the amount of products processed in the United States from domestic milk.

The Secretary of Agriculture also recommended that there be an increase in the monetary limitation in headnote 2(b) of Part 3 of the Appendix to the TSUS, which makes the quota restrictions provided for in Part 3 inapplicable to articles (except cotton and cotton waste) with an aggregate value of not over $10 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research.

The Secretary of Agriculture further determined and reported to me that a condition existed with respect to dried milk mixtures which required emergency treatment and, as a result, Presidential Proclamation No. 4423 of March 26, 1976, was issued placing import restrictions upon certain dried milk mixtures without awaiting the recommendations of the United States International Trade Commission, hereinafter referred to as the Commission, such restrictions to continue in effect pending the report and recommendations of the Commission and action thereon by the President.

Under the authority of said Section 22, I requested the Commission to make an investigation with respect to these matters. The Commission has made its investigation and has reported to me its findings and recommendations.

On the basis of the information submitted to me, I find and declare that:

(a) The dried milk mixtures, upon which a limitation is hereinafter imposed, are being imported or are practically certain to be imported

into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or to reduce substantially the amount of products processed in the United States from domestic milk;

(b) for the purpose of the first proviso of Section 22(b) of the Agricultural Adjustment Act, as amended, there is no representative period for imports of the said dried milk mixtures;

(c) the imposition of the import limitation hereinafter proclaimed is necessary in order that the entry, or withdrawal from warehouse, for consumption of such dried milk mixtures will not render or tend to render ineffective or materially interfere with, the price support program now conducted by the Department of Agriculture for milk, or reduce substantially the amount of products processed in the United States from domestic milk; and

(d) the monetary limitation in headnote 2(b) of Part 3 of the Appendix to the TSUS which makes the quota restrictions provided for in Part 3 inapplicable to articles (except cotton and cotton waste) with an aggregate value of $10 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research, should be increased to $25 and that such increase will not result in imports which will tend to render ineffective, or materially interfere with, any price support program now conducted by the Department of Agriculture, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to any price support program which is being undertaken.

NOW, THEREFORE, I, GERALD R. FORD, President of the United States of America, by virtue of the authority vested in me by Section 22 of the Agricultural Adjustment Act, as amended, and Section 604 of the Trade Act of 1974 (88 Stat. 2073, 19 U.S.C. 2483), do hereby proclaim as follows:

1. Item 950.19 of Part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

"	Articles	Quota Quantity
950.19	Dried milk (described in items 115.45, 115.50, 115.55, and 118.05) which contains not over 5.5 percent by weight of butterfat and which is mixed with other ingredients, including but not limited to sugar, if such mixtures contain over 16 percent milk solids by weight, are capable of being further processed or mixed with similar or other ingredients and are not prepared for marketing to the retail consumers in the identical form and package in which imported; all the foregoing mixtures provided for in items 182.98 and 493.16, except articles within the scope of other import restrictions provided for in this part . . .	None

2. Headnote 2(b) of Part 3 of the Appendix to the Tariff Schedules of the United States is amended to read as follows:

"(b) commercial samples of cotton or cotton waste of any origin in uncompressed packages each weighing not more than 50 pounds gross weight; and articles (except cotton and cotton waste) with an aggregate value of not over $25 in any shipment, if imported as samples for taking orders, for the personal use of the importer, or for research;".

3. This proclamation shall be effective on the third day following the day it is published in the FEDERAL REGISTER.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and first.

GERALD R. FORD.

(T.D. 77-72)

Executive Order 11960—Generalized System of Preferences

Title V of Public Law 93-618 and Executive Order 11960 amending Executive Order 11888, as amended by Executive Orders 11906 and 11934

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 24, 1977.

There is published below Executive Order 11960 of January 19, 1977, which makes certain changes in General Headnote 3(c) of the Tariff Schedules of the United States (TSUS) relating to the Generalized System of Preferences (GSP) established by the Trade Act of 1974, and certain other changes affecting commodity description breakouts in the TSUS. Annex I of the Executive Order shows the changes in the tariff descriptions and Annexes II and III show which of the new breakouts contains an "A" or "A*" in the GSP column of the TSUS as well as other changes in the GSP column. Annex IV shows changes in subdivision (iii) of General Headnote 3(c) referable to limitations on the GSP exemption for articles from certain countries.

The Executive Order was published in the FEDERAL REGISTER on January 24, 1977 (42 FR 4317). (049714)

(CLA-2-R:CV:S)

DONALD W. LEWIS,
for LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

THE PRESIDENT

Executive Order 11960 **January 19, 1977**

Amending the Generalized System of Preferences

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including Title V and Section 604 of the Trade Act of 1974 (88 Stat. 2066, 19 U.S.C. 2461 *et seq.;* 88 Stat. 2073, 19 U.S.C. 2483), and as President of the United States of America, in order to adjust the designation of eligible articles, taking into account information and advice received in fulfillment of the requirements of Section 503(a) and 131–134 of the Trade Act of 1974, it is hereby ordered as follows:

SECTION 1. In order to subdivide existing items for purposes of the Generalized System of Preferences, the Tariff Schedules of the United States (TSUS) are modified as provided in Annex I, attached hereto and made a part hereof.

SEC. 2. Annex II of Executive Order No. 11888 of November 24, 1975, as amended, is further amended as provided in Annex II, attached hereto and made a part hereof.

SEC. 3. Annex III of Executive Order No. 11888, as amended, is further amended as provided in Annex III attached hereto and made a part hereof.

SEC. 4. General Headnote 3(c)(iii) of the TSUS, as amended, is further amended as provided in Annex IV, attached hereto and made a part hereof.

SEC. 5. The amendments made by this Order shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered for consumption, or withdrawn from warehouse for consumption, on or after March 1, 1977.

GERALD R. FORD.

THE WHITE HOUSE,
January 19, 1977.

ANNEX I

GENERAL MODIFICATIONS OF THE TARIFF SCHEDULES OF THE UNITED STATES

NOTES:

1. Bracketed matter is included to assist in the understanding of proclaimed modifications.

2. The following items, with or without preceding superior descriptions, supersede matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", and "Rates of Duty 2", respectively.

Subject to the above notes the TSUS is modified as follows:

1. Item 121.57 is superseded by:

	[Leather, in the rough, partly finished, or finished:]		
	[Other:]		
	[Other:]		
	[Not fancy:]		
"121.55	Buffalo	5% ad val.	25% ad val.
121.58	Other	5% ad val.	25% ad val."

2. Item 135.40 is superseded by:

	[Vegetables, fresh, chilled, or frozen . . .]		
	"Carrots:		
135.41	Under 4 inches long	6% ad val.	50% ad val.
135.42	Other	6% ad val.	50% ad val."

3. Item 137.85 is superseded by:

	[Vegetables, fresh, chilled, or frozen . . .]		
	[Other:]		
"137.71	Brussels sprouts	25% ad val.	50% ad val."
137.86	Other	25% ad val.	50% ad val.

4. Conforming change: Headnote 1 of subpart C, part 12, Schedule 1 is modified by substituting therein "168.52" for "168.50."

5. Item 389.60 is superseded by:

	[Articles not specially provided for, of textile materials:]		
	[Other articles, not ornamented:]		
	[Of man-made fibers:]		
	"Other:		
389.61	Artificial flowers	25¢ per lb. + 15% ad val.	45¢ per lb. + 65% ad val.
389.62	Other	25¢ per lb. + 15% ad val.	45¢ per lb. + 65% ad val."

6.(a) Item 403.60 is superseded by:

	[Cyclic organic chemical products . . .]		
	"Other:		
403.58	Ethoxyquin (1,2-Dihydro-6-ethoxy-2,2,4-trimethylquinoline).	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val.
403.61	Other	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val."

(b) Conforming change: Headnote 1 of subpart B, part 1, Schedule 4 is modified by substituting therein "403.61" for "403.60."

7. Item 403.80 is superseded by:

	[All other products . . .]		
	"Other:		
403.81	Maleic anhydride	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val.
403.82	Other	1.7¢ per lb. + 12.5% ad val.	7¢ per lb. + 40% ad val."

8. Item 642.10 is superseded by:

	[Strands, ropes, cables, and cordage . . .]		
	[Not fitted with fittings and not made up into articles:]		
	[Not covered with textile or other nonmetallic material:]		
	[Wire strand:]		
"642.09	Of copper	7.5% ad val.	35% ad val.
642.11	Other	7.5% ad val.	35% ad val."

ANNEX II

Annex II to Executive Order No. 11888, as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers:

100.73	121.55	125.20	135.60	389.61	792.70
111.10	125.01	125.50	136.10	403.58	799.00
111.60	125.10	131.80	136.40	403.81	
121.35	125.15	135.41	177.40	642.09	

ANNEX III

Annex III to Executive Order No. 11888, as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers:

136.50 137.71 140.21 176.49

ANNEX IV

General Headnote 3(c) (iii) of the TSUS as amended by Executive Orders Nos. 11906 and 11934, is amended by adding, in numerical sequence, the following TSUS item numbers and countries set opposite these numbers:

136.50	Lebanon
137.71	Mexico
140.21	Mexico
176.49	Republic of China

(T.D. 77-73)

Customs Service decision

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 28, 1977.

The following is the substance of a recent decision made by the United States Customs Service where the issue involved is of sufficient general interest or importance to warrant publication in the Customs Bulletin. The names, addresses, and other identifying material have been omitted pursuant to 5 U.S.C. 552(b) (3) and (4), and 31 CFR 1.2(c)(1) (iii) and (iv), since the decision relates to the confidential

business transactions of a private party which are exempt from disclosure.

(ADM-9-03)

LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

Miniature Switchblade Knives

A shipment of miniature switchblade knives, each attached by a short length of chain to a keyring, was refused entry by the United States Customs Service pursuant to the provisions of 15 U.S.C. 1242, enacted by the so-called Switchblade Knife Act. The importer challenged the refusal to permit entry of the knives, claiming that, under *Precise Imports Corporation* v. *Kelly*, 378 F. 2d 1014 (1967), and section 12.95(a)(2) of the Customs Regulations (19 CFR 12.95 (a)(2)), only those switchblade knives which are designed primarily for use as weapons are prohibited importations under the Switchblade Knife Act (the principal provisions of which are found in 15 U.S.C. 1241–44).

Each of the knives in question consisted of a slim, stiletto-like blade, approximately 1¼ inches in length, which folded into a handle approximately 1⅝ inches in length. The blade could be made to spring open by slightly depressing a button on the handle. In the open position, the total length of the handle and blade was 2¾ inches.

Decided, the knives are clearly switchblade knives within the meaning of 15 U.S.C. 1241(b)(1) and section 12.95(a)(1) of the Customs Regulations (19 CFR 12.95(a)(1)), each of which describes a "switchblade knife" as, among other things, a knife having a blade which opens automatically by hand pressure applied to a button or other device in the handle of the knife. The holding in the *Precise* case does not apply to knives which are, in the condition imported, clearly switchblade knives under 15 U.S.C. 1241(b)(1) and, consequently, does not apply to the knives in question. Accordingly, the Customs Service determined that the knives were properly refused entry as switchblade knives which were, in the instant case, a prohibited importation.

E. J. DOYLE,
Acting Director,
Entry Procedures & Penalties Division.

(T.D. 77–74)

Executive Order 11951—International Trade in Textiles

Executive Order 11951 amending Executive Order 11651 to reflect changes in Textile Agreements referable to Import Restraints

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 24, 1977.

There is published below Executive Order 11951 of January 6, 1977, which amends Executive Order 11651 of March 3, 1972 (T.D. 72–94), relating to the Establishment of the Committee for the Implementation of Textile Agreements. The Executive Order deletes the reference in the earlier Executive Order to provisions dealing with import restraints in the Longterm Arrangement Regarding International Trade in Cotton Textiles entered into force October 1, 1962, as extended until September 30, 1973, and substitutes a reference to the provisions referable to import restraints for certain textiles to prevent market disruptions in the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973.

The following Executive Order was published in the FEDERAL REGISTER on January 7, 1977. (42 FR 1453) (049699)

(CLA–2–R:CV:S)

DONALD W. LEWIS,
for LEONARD LEHMAN.
Assistant Commissioner,
Regulations and Rulings.

THE PRESIDENT

Executive Order 11951 **January 6, 1977**

Relating to the Arrangement Regarding International Trade in Textiles

By virtue of the authority vested in me by the Constitution and statutes of the United States of America and as President of the United States of America, Section 1(c) of Executive Order No. 11651 of March 3, 1972, is amended by deleting "Articles 3 and 6 of the Long Term Arrangement Regarding International Trade in Cotton

Textiles done at Geneva on February 9, 1962, as extended," and substituting "Articles 3 and 8 of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973,".

GERALD R. FORD.

THE WHITE HOUSE,
January 6, 1977.

(T.D. 72-94)

Executive Order—Textile trade agreements

Establishment of the Committee for the Implementation of Textile Agreements

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 29, 1972.

There is published below Executive Order 11651 of March 3, 1972, establishing the Committee for the Implementation of Textile Agreements.

The Executive Order was published in the Federal Register on March 4, 1972 (37 F.R. 4699).

(012)

LEONARD LEHMAN,
Acting Commissioner of Customs.

THE WHITE HOUSE

EXECUTIVE ORDER
11651

ESTABLISHMENT OF THE COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

By virtue of the authority vested in me by section 204 of the Agricultural Act of 1956 (76 Stat. 104), as amended (7 U.S.C. 1854), and section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) The Committee for the Implementation of Textile Agreements (hereinafter referred to as the Committee), consisting of representatives of the Departments of State, the Treasury, Com-

merce, and Labor, with the representative of the Department of Commerce as Chairman, is hereby established to supervise the implementation of all textile trade agreements. It shall be located for administrative purposes in the Department of Commerce. The President's Special Representative for Trade Negotiations, or his designee, shall be a non-voting member of the Committee.

(b) Except as provided in subsection (c) of this section, the Chairman of the Committee, after notice to the representatives of the other member agencies, shall take such actions or shall recommend that appropriate official or agencies of the United States take such actions as may be necessary to implement each such textile trade agreement. Provided, however, that if a majority of the voting members of the Committee have objected to such action within ten days of receipt of notice from the Chairman, such action shall not be taken except as may otherwise be authorized.

(c) To the extent authorized by the President and by such officials as the President may from time to time designate, the Committee shall take appropriate actions concerning textiles and textile products under Section 204 of the Agricultural Act of 1956, as amended, and Articles 3 and 6 of the Long Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, as extended, and with respect to any other matter affecting textile trade policy.

SEC. 2. (a) The Commissioner of Customs shall take such actions as the Committee, acting through its Chairman, shall recommend to carry out all agreements and arrangements entered into by the United States pursuant to Section 204 of the Agricultural Act of 1956, as amended, with respect to entry, or withdrawal from warehouse, for consumption in the United States of textiles and textile products.

(b) Under instructions approved by the Committee, the Secretary of State shall designate the Chairman of the United States delegation to all negotiations and consultations with foreign governments undertaken with respect to the implementation of textile trade agreements pursuant to this Order. The Secretary of State shall make such representations to foreign governments, including the presentation of diplomatic notes and other communications, as may be necessary to carry out this order.

SEC. 3. Executive Order No. 11052 of September 28, 1962, as amended, and Executive Order No. 11214 of April 7, 1965, are hereby superseded. Directives issued thereunder to the Commissioner of Customs shall remain in full force and effect in accordance with their terms until modified pursuant to this Order.

SEC. 4. This Order shall be effective upon its publication in the *Federal Register*.

RICHARD NIXON.

THE WHITE HOUSE,
March 3, 1972.

(T.D. 77-75)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 2, 1977.

The following are synopses of drawback rates and amendments issued November 24, 1976, to February 4, 1977, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313 (a) and (b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the effective dates of exportation, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

DONALD W. LEWIS,
for LEONARD LEHMAN
Assistant Commissioner,
Regulations and Rulings.

(A) Company: Aeroclo Corp.
Section 1313(a) Articles: Aerosol valve mounting cups
Section 1313(a) Merchandise: Cold reduced electrolytic tin plate strip
Section 1313(b) Articles: Aerosol valve mounting cups
Section 1313(b) Merchandise: Cold reduced electrolytic tin plate strip
Factory: Moonachie, NJ
Statement signed: September 1, 1976
Basis of claim: Used in, less valuable waste
Effective date: January 5, 1974
Rate forwarded to RC of Customs: New York, December 23, 1976

(B) Company: General Electric Co.
Section 1313(a) Articles: High Pressure Turbines
Section 1313(a) Merchandise: High Pressure Heads
Section 1313(b) Articles: High Pressure Turbines
Section 1313(b) Merchandise: High Pressure Heads
Factory: Lynn, MA
Statement signed: April 14, 1976
Basis of claim: Used in less valuable waste
Effective date: December 1, 1974
Rate forwarded to RC of Customs: New York, January 25, 1977
Amends: T.D. 37886–C, as amended

(C) Company: General Electric Co.
Section 1313(a) Articles: Main stop valves and combined reheat valves
Section 1313(a) Merchandise: Upper head and pressure seal head castings
Section 1313(b) Articles: Main stop valves and combined reheat valves
Section 1313(b) Merchandise: Upper heads and pressure seal heads
Factory: Schenectady, NY
Statement signed: January 26, 1977
Basis of claim: Used in, less valuable waste
Effective date: August 1, 1974
Rate forwarded to RC of Customs: New York, February 4, 1977

(D) Company: Harris Corp., Bindery Systems Div.
Section 1313(a) Articles: Newspaper stuffing machines, FG Inserters, XG–I and XG–II Gatherers
Section 1313(a) Merchandise: Feed hoppers
Section 1313(b) Articles: Newspaper stuffing machines, FG Inserters XG–I and XG–II Gatherers
Section 1313(b) Merchandise: Feed hoppers
Factories: Champlain, NY, and Easton, PA
Statement signed: November 4, 1976
Basis of claim: Appearing in
Effective date: March 5, 1976
Rate forwarded to RC's of Customs: New York and Baltimore, November 24, 1976

(E) Company: Merck and Co., Inc.
Section 1313(a) Articles: C-chloro-4-(P-Chlorophenoxy) Aniline
Section 1313(a) Merchandise: Para Chlorophenol
Section 1313(b) Articles: C-Cholro-4-(P-Chlorophenoxy) Aniline
Section 1313(b) Merchandise: Para Chlorophenol
Factory: Rahway, NJ
Statement signed: September 19, 1975
Basis of claim: Used in
Effective date: June 1, 1975
Rate forwarded to RC of Customs: New York, December 10, 1976
Amends: T.D. 54109–C

(F) Company: Olin Corp., Brass Group, Somers Thin Strip Div.
Section 1313(a) Articles: Stainless steel sheet and strip in coils, various; nickel alloys, various
Section 1313(a) Merchandise: Thin gauge stainless steel and nickel and nickel/alloy strip in coil forms
Section 1313(b) Articles: Stainless steel sheet and strip in coils, various; nickel alloys, various
Section 1313(b) Merchandise: Thin gauge stainless steel and nickel and nickel/alloy strip in coil form
Factory: Waterbury, CT
Statement signed: May 10, 1976
Basis of claim: Used in, less valuable waste
Effective date: April 1, 1975
Rate forwarded to RC of Customs: New York, January 10, 1977

(G) Company: C. J. Patterson Co., D/B/A/ Patco Products
Section 1313(a) Articles: Sodium stearoyl-2-Lactylate and Calcium stearoyl-2-Lactylate
Section 1313(a) Merchandise: Lactic acid 88% food grade
Section 1313(b) Articles: Sodium stearoyl-2-Lactylate and Calcium stearoyl-2-Lactylate
Section 1313(b) Merchandise: Lactic acid 88% food grade
Factory: Grandview, MO
Statement signed: August 10, 1976
Basis of claim: Used in
Effective date: June 12, 1976
Rates forwarded to RC of Customs: Chicago, December 10, 1976

(H) Company: Waukesha Engine Div. of Dresser Industries, Inc.
Section 1313(a) Articles: Diesel and gas engines and engine driven generators
Section 1313(a) Merchandise: Various engine components
Section 1313(b) Articles: Diesel and gas engines and engine driven generators
Section 1313(b) Merchandise: Various engine components
Factory: Waukesha, WI
Statement signed: October 8, 1976
Basis of claim: Appearing in
Effective date: January 1, 1972
Rate forwarded to RC's of Customs: New York, Chicago, and New Orleans November 25, 1976

Amends: T.D. 46030–E

(T.D. 77–76)

Synopses of drawback decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 2, 1977.

The following are synopses of drawback rates and amendments issued November 30, 1976, to January 19, 1977, inclusive, pursuant to sections 22.1 and 22.5, inclusive, Customs Regulations.

In the synopses below are listed, for each drawback rate or amendment approved under section 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the effective dates of exportation, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA–1–09)

DONALD W. LEWIS,
for LEONARD LEHMAN,
Assistant Commissioner,
Regulations and Rulings.

229–304—77——3

(A) Company: Alumax Foils Inc.
Articles: Aluminum foil
Merchandise: Aluminum ingot, pigs, sows, or rerolls
Factories: St. Louis, MO; and at factories of agents operating under T.D. 55207(1)
Statement signed: November 8, 1976
Basis of claim: Appearing in
Effective date: April 14, 1975
Rate forwarded to RC to Customs: San Francisco, December 20, 1976

(B) Company: Aluminum Co. of America
Articles: Gallium—Purity 99.9999% minimum
Merchandise: Gallium—99.5% to 99.99% pure
Factories: Benton, AR and East S. Louis, IL
Statement signed: November 8, 1976
Basis of claim: Appearing in
Effective date: June 30, 1976
Rate forwarded to RC of Customs: New York, January 19, 1977
Amends: T.D. 50256–B

(C) Company: Carrier Corp.
Articles: Refrigeration systems, air conditioners, heat pumps, and other products
Merchandise: Steel sheet, strip and plate; copper tubing, castings and forgings
Factories: Syracuse, NY; Collierville, McMinnville, Lexington and Knoxville, TN; Tyler, TX; La Puente and Montebello, CA; Indianapolis, IN; New Lexington, East Liberty, Springfield and Dayton, OH; Chicago and Wheeling, IL; and Danville, Jeanette and Demora, PA
Statement signed: June 29, 1976
Basis of claim: Appearing in
Effective date: September 4, 1975
Rate forwarded to RC of Customs: Boston, December 23, 1976
Amends: T.D. 76–344–F

(D) Company: The Ceco Corp.
Articles: Prefabricated iron or steel buildings and building components; iron or steel doors, frames and framing; tracks and related hardware
Merchandise: Steel sheet, strip and plate; galvanized steel sheet; and structural steel

Factories: Columbus, MS; Rocky Mount, NC; Mt. Pleasant, IA; Little Rock and Knoxville, AR; Milan, TN; Valdosta, GA; and Broadview, IL
Statement signed: August 16, 1976
Basis of claim: Appearing in
Effective date: June 4, 1975
Rate forwarded to RC of Customs: Chicago, December 7, 1976

(E) Company: E.I. du Pont de Nemours and Co.
Articles: Oil orange flakes and liquid; oil red flakes and powder; oil red A flakes and powder.
Merchandise: Beta-Naphthol
Factory: Deepwater, NJ
Statement signed: March 22, 1976
Basis of claim: Appearing in
Effective date: April 24, 1975
Rate forwarded to RC of Customs: Baltimore, December 13, 1976

(F) Company: E.I. du Pont de Nemours and Co.
Articles: P–76 (Polyester flake Cronar film base) and X-ray film
Merchandise: P–76 Polyester flake
Factory: Brevard, NC
Statement signed: May 26, 1976
Basis of claim: Appearing in
Effective date: P–76 polyester flake—May 17, 1974 X-ray film—June 24, 1975
Rate forwarded to RC of Customs: Baltimore, December 22, 1976

(G) Company: E.I. du Pont de Nemours and Co.
Articles: Typar spunbonded polypropylene sheeting
Merchandise: Polypropylene
Factory: Old Hickory, TN
Statement signed: December 13, 1976
Basis of claim: Appearing in
Effective date: April 5, 1974
Rate forwarded to RC of Customs: Baltimore, January 3, 1977
Amends: T.D. 74–300–P

(H) Company: Eastman Kodak Co.
Articles: Color developers (photographic chemicals)
Merchandise: Meta Toluidine, N-Ethyl-M-Toluidine and N,N-Diethyl-M-Toluidine

Factory: Kingsport, TN
Statement signed: November 19, 1976
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Effective date: August 11, 1974
Rate forwarded to RC of Customs: Houston, December 7, 1976

(I) Company: General Cable Corp.
Articles: Aluminum rod, aluminum wire and aluminum cable
Merchandise: Aluminum ingots and aluminum rod
Factories: Hot Springs, AR; Abbeville, SC; St. Louis, MO; Bayonne, NJ; Elkton, MD; Memphis, TN; Sanger and Colusa, CA
Statement signed: September 13, 1976
Basis of claim: Appearing in
Effective date: June 5, 1975
Rate forwarded to RC of Customs: New York, January 10, 1977
Amends: T.D.'s 50839–D, as amended by T.D.'s 55626–G, 66–146–C, and 68–297–S

(J) Company: General Electric Co.
Articles: Polycarbonate Resin (powder or pellet); Polycarbonate sheet (Trade name LEXAN)
Merchandise: 4,4′-dihydroxydiphenyl propane (Diphenylol propane/bisphenol-A)
Factory: Mt. Vernon, IN
Statement signed: December 9, 1976
Basis of claim: Appearing in
Effective date: April 19, 1976
Rate forwarded to RC of Customs: New York, December 20, 1976

(K) Company: General Mills Chemicals, Inc.
Articles: Polyamide resins
Merchandise: Organic chemicals, intermediate products, and other raw materials
Factories: Kankakee, IL; Minneapolis, MN
Statement signed: April 23, 1976
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Effective date: November 26, 1974
Rate forwarded to RC of Customs: Chicago, January 5, 1977
Revokes: T.D. 77–29–L, Customs letter of October 29, 1976, superseded

(L) Company: The B. F. Goodrich Co.
Articles: Plastic materials, resins, and compounds
Merchandise: Ethylene dichloride
Factories: Calvert City, KY; Henry, IL; Avon Lake, OH; Pedricktown, NJ; Louisville, KY; and Long Beach, CA
Statement signed: October 8, 1976
Basis of claim: Used in less valuable waste, with distribution to the products obtained in accordance with their relative values at the time of separation
Effective date: December 31, 1973
Rate forwarded to RC of Customs: Baltimore, January 5, 1977

(M) Company: B. F. Goodrich Co.
Articles: Reactive liquid polymers
Merchandise: Levulinic acid
Factory: Avon Lake, OH
Statement signed: November 3, 1975
Basis of claim: Used in
Effective date: August 31, 1974
Rate forwarded to RC of Customs: Baltimore, December 8, 1976

(N) Company: B. F. Goodrich Co.
Articles: Estane polyurethane compounds and Tuftane film
Merchandise: Polyurethane
Factories: Gloucester, MA; and Avon Lake, OH
Statement signed: June 14, 1976
Basis of claim: Used in
Effective date: August 30, 1974
Rate forwarded to RC of Customs: Baltimore, December 10, 1976

(O) Company: Great Lakes Chemical Corp.
Articles: Tetrabromobisphenol A
Merchandise: Bisphenol A
Factory: El Dorado, AR
Statement signed: November 21, 1975
Basis of Claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Effective date: February 23, 1975
Rate forwarded to RC of Customs: New Orleans, December 8, 1976

(P) Company: Gulf Oil Corp.
Articles: Barban herbicide
Merchandise: Meta-chloroaniline, butynediol, thionyl chloride
Factory: Jayhawk works, south of Pittsburgh, KS
Statement signed: April 29, 1976
Basis of claim: Used in
Effective date: January 1, 1967
Rate forwarded to RC of Customs: Baltimore, January 17, 1977

(Q) Company: Hyman Brickle and Son, Inc.
Articles: Bench sorted grease wool, scoured wool, wool top
Merchandise: Grease wool
Factories: At the factories of its agents operating under T.D. 55207(1)
Statement signed: November 8, 1975
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation
Effective date: November 15, 1975
Rate forwarded to RC of Customs: Boston, December 7, 1976

(R) Company: Kaiser Aluminum and Chemical Corp.
Articles: Molten alloyed aluminum
Merchandise: Aluminum pig and aluminum alloy pig
Factory: Bedford, IN
Statement signed: November 2, 1976
Basis of claim: Appearing in
Effective date: January 2, 1976
Rate forwarded to RC of Customs: New York, December 3, 1976

(S) Company: Krauth and Benninghofen Corp.
Articles: Contemporary accessory and occasional furniture
Merchandise: Tempered glass
Factory: Hamilton, OH
Statement signed: September 22, 1976
Basis of claim: Appearing in
Effective date: April 22, 1976
Rate forwarded to RC to Customs: Chicago, January 12, 1977

(T) Company: Marino Industries Corp.
Articles: Steel studs
Merchandise: Galvanized steel coils, ASTM A–527–71
Factory: Westbury, NY

Statement signed: November 29, 1976
Basis of claim: Appearing in
Effective date: August 6, 1976
Rate forwarded to RC of Customs: New York, December 23, 1976

(U) Company: Monsanto Co.
Articles: Polyester staple fiber and polyester flakes (chips/pellets)
Merchandise: Ethylene glycol and terephathalic acid
Factory: Decatur, AL
Statement signed: November 17, 1976
Basis of claim: Appearing in
Effective date: Polyester staple fiber—April 1, 1974
Polyester flakes—December 5, 1975
Rate forwarded to RC's of Customs: New York and Chicago, November 30, 1976

(V) Company: Penn Brass and Copper Co.
Articles: Radiator tubing and rivet tubing
Merchandise: Aluminum billet
Factory: Erie, PA
Statement signed: September 28, 1976
Basis of claim: Appearing in
Effective date: March 3, 1976
Rate forwarded to RC of Customs: New York, January 5, 1977

(W) Company: RMI Co.
Articles: Titanium and titanium alloy mill products
Merchandise: Vanadium pentoxide
Factory: Niles, OH
Statement signed: November 17, 1976
Basis of claim: Appearing in
Effective date: November 10, 1974
Rate forwarded to RC of Customs: New York, December 23, 1976

(X) Company: Sun Chemical Corp.
Articles: Organic pigments
Merchandise: Dye intermediates in various ratios
Factories: Cincinnati, OH; New York, NY; and Newark, NJ
Statement signed: December 14, 1976
Basis of claim: Used in
Effective date: March 24, 1975
Rate forwarded to RC of Customs: New York, January 3, 1977

(Y) Company: Sunkist Growers, Inc.
Articles: Frozen concentrated pineapple juice blend, frozen concentrated pineapple and orange juice blend, frozen concentrated pineapple and grapefruit juice blend
Merchandise: Unsweetened concentrated pineapple juice
Factory: Ontario, CA
Statement signed: October 5, 1976
Basis of claim: Appearing in
Effective date: For account of Castle & Cooke, Inc.: January 1, 1973; for Sunkist Growers, Inc. own account, February 17, 1976
Rate forwarded to RC of Customs: San Francisco, January 3, 1977

(Z) Company: Wm. Wrigley Jr. Co.
Articles: Slab (stick) chewing gum; Pellet chewing gum
Merchandise: Mannitol (a sweetening agent), 96.0% maximum
Factories: Chicago, IL; Santa Cruz, CA; Flowery Branch, FA
Statement signed: December 8, 1976
Basis of claim: Appearing in
Effective date: November 5, 1976
Rate forwarded to RC of Customs: Chicago, January 19, 1977

Decisions of the United States Customs Court

Customs Decision

(C.D. 4689)

RUDOLPH MILES *v.* UNITED STATES

American goods returned

Z-beams, products of the United States, were processed in Mexico into floating sills and thereafter assembled into railroad cars classified under item 690.15 of the tariff schedules as railroad and railway rolling stock. Duty allowance for the Z-beams, claimed by plaintiff under item 807.00, as amended, *disallowed* for failing to qualify as articles "exported in condition ready for assembly without further fabrication" and as having not been "advanced in value or improved in condition abroad except by being assembled and except by operations such as cleaning, lubricating, and painting."

ITEM 807.00—FURTHER FABRICATION

The record testimony demonstrated that the steps performed on the Z-beams, until their incorporation into the undercarriages of the railroad cars, constituted "further fabrication" within the meaning of clause (a) of item 807.00, as amended. The burning of slots and holes in the Z-beams was an indispensable operation to their assembly as center sills into the railroad cars. The summary of testimony of the operations performed with respect to the Z-beams established the fact that the Z-beams were not "ready for assembly without further fabrication." See *General Instrument Corporation* v. *United States*, 60 CCPA 178, C.A.D. 1106, 480 F. 2d 1402 (1973) and *United States* v. *Texas Instruments Incorporated*, 64 CCPA—C.A.D. 1178 (1976) where a cutting process employed on products exported from the United States did not constitute "further fabrication" within the meaning of clause (a).

ITEM 807.00—PHYSICAL IDENTITY TEST

Physical changes in the article exported from the United States do not necessarily lead to loss of "physical identity" within the meaning of clause (b) of item 807.00. See *E. Dillingham, Inc.* v. *United States*, 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972). "The legislative history makes it * * * apparent * * * that Congress did not intend to exclude articles from 807.00 merely because the American components had undergone some change of form or shape. The test specified * * * is whether the components have been changed in form, shape, or otherwise to such an extent that they have lost their *physical identity* in the assembled article." (Emphasis in original.) *United States* v. *Baylis Brothers Co.*, 59 CCPA 9, 12, C.A.D. 1026, 451 F. 2d 643 (1971).

ITEM 807.00—ADVANCED IN VALUE

The various operations performed with respect to the Z-beams increased their value and improved their condition. The burning of the slots and holes in the Z-beams was not an operation "incidental to the assembly process" of the Z-beams into railroad cars. The operations were not *ejusdem generis* with "cleaning, lubricating, and painting," or of a minor nature as contemplated by the legislative history of item 807.00, as amended. See H.R. Rep. No. 342, 89th Cong., 1st Sess. pp. 48–49 (1965).

Court Nos. 73–11–03042, etc.

Port of El Paso

[Judgment for defendant.]

(Decided February 15, 1977)

Stein and Shostak (*S. Richard Shostak*) of counsel for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Herbert P. Larsen*, trial attorney), for the defendant.

RE, Judge: The question presented in these four actions, consolidated for purpose of trial, pertains to the lawful customs duties to be assessed on 200 roller bearing railroad boxcars with cushion

underframes exported from Mexico and entered at the port of El Paso, Texas during 1970.

The boxcars were classified under item 690.15 of the Tariff Schedules of the United States [TSUS] which covers "Railroad and Railway rolling stock: Passenger, baggage, mail, freight and other cars, not self-propelled," with duty at the rate of 18 per centum ad valorem. Duty was assessed under item 807.00, TSUS, as amended by Public Laws 89–241 and 89–806, upon the full appraised value of the railroad cars less the cost or value of 56 fabricated components of United States origin.

Plaintiff does not dispute the classification, but challenges the refusal of the district director of customs to make an allowance of $395.22 per car in the appraisement under item 807.00 of the tariff schedules. The claimed allowance is for the cost or value of 400 Z-beams which were first processed in Mexico into floating center sills, and thereafter assembled into the imported railroad cars.[1]

Item 807.00 as amended by Public Laws 89–241 and 89–806, pursuant to which the allowance is claimed, provides:

"Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting----------	A duty upon the full value of the imported article, less the cost or value of such products of the United States (see headnote 3 of this subpart)"

[1] A list of 56 specialties and parts of American origin for which duty allowances were claimed and granted under item 807.00, TSUS, at the time of entry is attached to the Special Customs Invoice accompanying each entry. No claim was made for the "center sills," the 57th and last item on each list, until after liquidation upon the filing of a protest pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). Plaintiff's second amended complaint makes no reference to "Z-beams," but describes the items in controversy as "center sill sections, the product of the United States, which were assembled abroad into said Railroad cars."

Schedule 8, part 1; subpart B, headnote 3 reads:

"3. Articles assembled abroad with components produced in the United States.—The following provisions apply only to item 807.00:

(a) The value of the products of the United States assembled into the imported article shall be—

(i) the cost of such products at the time of the last purchase; or

(ii) if no charge is made, the value of such products at the time of the shipment for exportation,

as set out in the invoice and entry papers; except that, if the appraiser concludes that the amount so set out does not represent a reasonable cost or value, then the value of such products shall be determined in accordance with section 402 or 402a of this Act.

(b) The duty on the imported article shall be at the rate which would apply to the imported article itself, as an entirety without constructive separation of its components, in its condition as imported if it were not within the purview of this subpart. If the imported article is subject to a specific or compound rate of duty, the total duties shall be reduced in such proportion as the cost or value of such products of the United States bears to the full value of the imported article."

Plaintiff contends that the Z-beams meet every requirement of item 807.00, TSUS, and are thus entitled to the prescribed duty allowance.

Defendant disputes this claim, and maintains that plaintiff has failed to prove compliance with clauses (a), (b) and (c) of item 807.00, TSUS. It also contends that plaintiff has failed to establish the cost or value of the Z-beams as required by headnote 3 of schedule 8, part 1, subpart B, TSUS. Moreover, the defendant urges that, should plaintiff meet its burden of establishing entitlement to an allowance under the tariff item, its measure of recovery is limited to a deduction of the cost or value of only 221 of the 400 Z-beams from the value of the railroad cars. This contention is predicated upon plaintiff's failure to file, at the time of entry, export declarations (Customs Form 4467) for the remaining 179 beams. The declaration is a necessary part of the documentation required by part 10 of the customs regulations to establish their status as products of the United States. It was stipulated at the trial that the 221 Z-beams, for which export declarations were filed and produced, were of American origin.

The first question is whether the record supports plaintiff's claim that the Z-beams were "assembled abroad" in compliance with the conditions set forth in clauses (a), (b) and (c) of item 807.00, TSUS.

Summary of Operations Performed Abroad.

The operations performed on the Z-beams in Mexico were described by one of plaintiff's witnesses, Mr. Arturo Sanchez, a mechanical engineer and technical manager of Constructora Nacional de Carros de Ferrocarril, S.A., which built the imported railroad cars. They were built for the Atchison, Topeka and Santa Fe Railroad in compliance with A.A.R. (Association of American Railroads) standards.

Mr. Sanchez testified that each of the imported railroad cars contains a floating center sill made up of two steel Z-beams, each 663⅛ inches long. He stated that in order to form the center sill, the Z-beams were first placed in pairs on a jig in a back-to-back position on the long side. After they were aligned, the center was located and the position of the seven stops where the chock absorbers would come in contact was determined. Seven steel stops were then electrically welded to each Z-beam. One stop was at the center, and three on each side which were equidistant from the center, and which lined up exactly with those on the other beam so that there would be no disalignment in the operation of the cars. In the next step, two slots were burned with an acetylene torch in the wide side, or "web," at each end of both Z-beams. This permits the insertion, at a later stage, of the draft key that fixes the coupler to the yoke, and is part of the system of gears that goes between each car. Each slot was then reinforced with a U-shaped steel strip that was welded around it.

The two Z-beams were then moved to a second jig and butt welded along their length. At this stage, the butt welded Z-beams became and were thereafter referred to as a floating, or sliding, center sill.

The center sill was removed from the jig, inverted, with the butt welded flanges facing downward, and placed upon special supports. In order to maintain the sill in its assemblage, eleven U-shaped guides were welded on each side of the center sill, and seven clamps, necessary to hold the brake pipe, were welded, six on one side and one on the other side of the sill. Since A.A.R. regulations require the brake pipe to cross the center sill, a slot was burned in the web of each Z-beam to allow the brake piping to pass through. Thick striker plates, or reinforcements, were then welded to the extreme end of each center sill to form a frame.

The next step involved the burning, with an acetylene blow torch, and reaming, where necessary, of 31 holes along the short flange, or wing, of each Z-beam. The purpose was to install on each beam four wear plates, to protect the center sill from damage, and seven support

plates, to support the various devices and mechanisms, such as the hydraulic shock absorbers, draft gear system, and restorer spring which were to be placed inside the center sill. It was necessary to position the holes with a gauge so that the plates would be aligned and equidistant from the center of the sill.

In the next stage, the wear plates were affixed with bolts and rivets; the draft gear system, spring, yoke and other devices were placed within the floating center sill; the brake tubing was installed; and the support plates were attached with bolts and rivets or screws.

The completed center sill was then lifted and located on the underframe of the railroad car, which was also in an inverted position.

Clause (a).

Turning to clause (a) of item 807.00, the key question is whether the work performed upon the Z-beams in Mexico, from the time they were placed in pairs on the first jig until their assembly as complete floating center sills into the underframe of the imported railroad cars, shows that they were "fabricated components" exported "in condition ready for assembly without further fabrication." Solely for the purpose of deciding this issue, it is assumed that plaintiff has satisfactorily established the disputed American origin of the 179 beams for which no export declarations were produced.

Defendant, contending that the Z-beams were not "ready for assembly" as required by clause (a), in its brief urges that the burning of 3 slots and 31 holes in each beam was "part of the fabrication of the component" and that "whatever may have been exported [from the United States], it was not a fabricated component * * *." In essence, defendant contends that the Z-beams, which were first processed into center sills, are merely component materials, and that the center sills are the "fabricated components" which were assembled into the imported articles.

An article which is subjected to a subassembly process, or operation prior to assembly, is not necessarily precluded from qualifying for item 807.00, TSUS, status. In *General Instrument Corporation* v. *United States*, 60 CCPA 178, C.A.D. 1106, 480 F. 2d 1402 (1973), the appellate court specifically rejected, as being "unreasonably restrictive," what it termed "the artificial single assembly-dual assembly distinction as determinative of classification under item 807.00." *Id.* at 182. In the *General Instrument* case, the trial court, in denying the allowance under item 807.00, relied on the single or dual assembly theory espoused by the Customs Court in the case of *Amplifone Corp.* v. *United States*, 65 Cust. Ct. 58, C.D. 4054 (1970).

The *Amplifone* case interpreted the words "fabricated components * * * which * * * were exported in condition ready for assembly without further fabrication." It reasoned that item 807.00 required distinguishing between a single and a dual assembly process. In a *single* assembly process, the United States product is directly assembled or incorporated into the ultimate merchandise. In a *dual* assembly process, the article is first incorporated into a subassembly which, in turn, is assembled or incorporated into the ultimate merchandise. The *Amplifone* case held that for item 807.00 treatment, the "fabricated component" had to be a "complete" unit in itself, and not subject to further assembly other than directly into the final product to be exported.

By the application of the reasoning of the *Amplifone* case, the trial court, in the *General Instrument* case, held that, since the disputed articles were subject to a *dual* assembly process, they were not "fabricated components" within the meaning of item 807.00.

In reversing the decision of the trial court, and rejecting the rationale of the *Amplifone* case, the Court of Customs and Patent Appeals stated:

> "The inquiry under item 807.00 should not focus on the identification of possible sub-units of the whole product and the relationship between the disputed element and such sub-units. Instead, classification under item 807.00 depends upon the relationship of the disputed element to the whole. The steps to which the disputed element is subjected are, of course, relevant to the issue, but we do not agree that initial assemblage into an artifically identified sub-unit is a step which necessarily precludes a finding of mere assembly." 60 CCPA at 182.

Nevertheless, focusing the inquiry on the relationship of the Z-beams to the completed boxcars for export, and the steps performed on the Z-beams until their incorporation into the undercarriages, the court finds that the operations performed in Mexico, including the burning of slots and holes in the Z-beams, constituted "further fabrication" within the meaning of clause (a) of item 807.00, TSUS.

As the record amply demonstrates, the burning of slots and holes was an indispensable operation to the assembly of the Z-beams as center sills into the railroad cars. The record discloses that the slots were necessary for the insertion of the draft key which fixes the coupler to the yoke. They were likewise necessary to permit the brake piping to pass through the center sill as required by the A.A.R. regulations. The holes were essential for installation of the wear plates, which protect the center sill, and of the support plates, which keep

the various devices in place inside the center sill. These operations show that the Z-beams were not "ready for assembly without further fabrication." The operations on the Z-beams are analogous to the opening, oiling and carding operations performed abroad prior to the assembly upon the bulk fibers, in *E. Dillingham, Inc.* v. *United States*, 60 CCPA 39, C.A.D. 1078, 470 F. 2d 629 (1972). In the *Dillingham* case, the bulk fibers had been exported to Canada together with fabric to be made into papermakers' felt, and were returned to this country. The appellate court held that the opening, oiling and carding of the bulk fibers constituted "further fabrication" without which the fiber component was not in condition ready for assembly with the fabric under clause (a) of item 807.00, TSUS. In the case at bar, the burning of the slots and holes in the Z-beams constituted fabrication of a more advanced nature than the operations performed in the *Dillingham* case.

Also pertinent is *The Rubberset Company et al.* v. *United States*, 73 Cust. Ct. 107, C.D. 4560, 383 F. Supp. 1403 (1974). In the *Rubberset* case, nylon filaments of American origin were shipped in bulk to Canada. There they underwent various sorting and selection processes prior to their assembly into paint brush knots and paint brushes that were subsequently exported to the United States. The court held that this interim processing constituted a "further fabrication" within the meaning of clause (a) of item 807.00, TSUS.

Plaintiff cites the previously discussed case of *General Instrument Corporation* v. *United States*, 60 CCPA 178, C.A.D. 1106, 480 F. 2d 1402 (1973) as an example of an assembly process within the purview of clause (a). That case, however, is readily distinguishable from the case at bar. In the *General Instrument* case, anode foil, cathode foil, paper, metal tabs, plastic insulating film and cellophane tape were exported from the United States to Taiwan for assembly into electrolytic capacitors. All of these items, however, entered directly into the assembly process without any prior treatment other than cutting some of the components to length and trimming the edges of the anode foil. To the same effect, see *General Instrument Corporation* v. *United States*, 61 CCPA 86, C.A.D. 1128, 499 F. 2d 1318 (1974) (television deflection yokes) and *General Instrument Corporation* v. *United States*, 72 Cust. Ct. 86, C.D. 4507 (1974), *appeal dismissed*, 62 CCPA 109 (1974) (horizontal output transformers). In the case at bar, the operations pertaining to the burning of the slots and holes were essential prerequisites to the processing of the Z-beams into the center sills which were incorporated into the railroad cars. As shown in the recitation of the summary of testimony, these operations indicate that

the Z-beams were not exported "in condition ready for assembly without further fabrication."

The operations performed on the Z-beams are also distinguishable from the cutting process employed in *United States* v. *Texas Instruments Incorporated*, 64 CCPA—, C.A.D. 1178 (1976), in which completely fabricated and tested transistor chips were specially arranged by the thousands in rows and columns on silicon slices. They were exported abroad for separation and assembly of the individual chips into operative transistors. Analogizing the cutting process to the operations performed on the wires or the foils in the *General Instrument* cases, *supra*, the court held that the cutting or separation of the chips did not constitute "further fabrication" within the meaning of clause (a) of item 807.00, TSUS.

Clause (b).

Although defendant states that the Z-beams were "changed in form and shape," the court agrees with plaintiff that, for purposes of item 807.00, TSUS, clause (b), they had not "lost their physical identity * * * by change in form, shape, or otherwise" upon their incorporation as center sills into the railroad cars. Neither the burning of holes and slots in the beams, nor the welding of two beams together into a center sill, resulted in a loss of their physical identity. That the Z-beams did not lose their physical identity may be seen in various photographs and diagrams submitted which illustrate, at different stages, the work performed on the beams.

Physical changes in the article do not necessarily lead to loss of "physical identity" within clause (b) of item 807.00. In the *Dillingham* case, *supra*, the appellee argued that the fabric component employed in making the exported article did not meet the requirements of clause (b) because its width was changed; it had been completely perforated with holes; and had become a blend of fabric and fibers. The appellate court disagreed:

> "The question, however, is not whether the fabric was 'changed' by assembly to form the article, but whether it has lost its 'physical identity in such articles by change in form, shape, or otherwise.' Neither the change in the width of the fabric nor its having been 'perforated with holes' is loss of physical identity. Further, an examination of the felts reveals that the fabric has not lost its physical identity by having the fibers entwined therein. Certainly the needled *assembly* acquired a 'new physical identity' as a papermaker's felt with a new 'commercial utility' but this does not necessarily mean that the *component* lost its physical identity. We find that it did not." (Emphasis in original.) 60 CCPA at 46.

Furthermore, as the Court of Customs and Patent Appeals stated in *United States* v. *Baylis Brothers Co.*, 59 CCPA 9, 12, C.A.D. 1026, 451 F. 2d 643 (1971):

> "The legislative history makes it equally apparent, however, that Congress did not intend to exclude articles from item 807.00 merely because the American components had undergone some change of form or shape. The test specified in item 807.00 is whether the components have been changed in form, shape, or otherwise to such an extent that they have lost their *physical identity* in the assembled article. The term 'physical identity' was used to exclude from item 807.00 those assembled articles whose American components are 'chemical products, food ingredients, liquids, gases, powders,' and the like." (Footnote omitted; emphasis in original.)

This physical identity test was reiterated in two later cases: *General Instrument Corporation* v. *United States*, 60 CCPA 178, 183, C.A.D. 1106, 480 F. 2d 1402 (1973); *General Instrument Corporation* v. *United States*, 61 CCPA 86, 90, C.A.D. 1128, 499 F. 2d 1318 (1974).

Clause (c).

To qualify for the claimed item 807.00 allowance, subdivision (c) of that item requires that the articles "have not been advanced in value or improved in condition abroad except by being assembled and by operations incidental to the assembly process such as cleaning, lubricating, and painting." This requirement of clause (c) is not met since it is clear that the Z-beams were "advanced in value or improved in condition" by the various operations performed in Mexico.

Any doubt as to the meaning of clause (c) is resolved by the following statements in H.R. Rep. No. 342, 89th Cong., 1st Sess. pp. 48–49 (1965), accompanying H.R. 7969, subsequently enacted as the Tariff Schedules Technical Amendments Act of 1965, Pub. L. 89–241, which amended item 807.00, TSUS:

> "It appears that under the language of item 807.00 minor operations such as painting incidental to assembly abroad may be precluded, and that in certain respects the item is ambiguous, with the result that it imposes undue administrative burdens on customs officers.
>
> Section 72 of the bill would amend item 807.00 so that it would apply to articles assembled abroad in whole or in part of fabricated components, the product of the United States, which * * * (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

> The amended item 807.00 would specifically permit the U.S. component to be advanced or improved 'by operations incidental to the assembly process such as cleaning, lubricating, and painting.' It is common practice in assembling mechanical components to perform certain incidental operations which cannot always be provided for in advance. For example, in fitting the parts of a machine together, it may be necessary to remove rust; to remove grease, paint, or other preservative coatings; to file off or otherwise remove small amounts of excess material; to add lubricants; or to paint or apply other preservative coatings. It may also be necessary to test and adjust the components. Such operations, *if of a minor nature* incidental to the assembly process, whether done before, during, or after assembly, would be permitted even though they result in an advance in value of the U.S. components in the article assembled abroad." (Emphasis added.)

The burning of slots and holes in the Z-beams cannot be considered an operation "incidental to the assembly process" such as the removal of "small amounts of excess material." The operations performed here clearly are not *ejusdem generis* with "cleaning, lubricating, and painting," and, surely, are not of a "minor nature," as contemplated by the House Report.

Item 807.00, TSUS, was subsequently amended by Public Law 89–806. This amendment, however, merely removed the requirement of verifying that the American components were exported for the purpose of assembly and return as assembled articles to the United States. It was not designed to change the intended meaning of the earlier amendment as it pertained to clause (c).

Although made in the context of a different statute, the statements of the appellate court, in the incorporated case of *United States* v. *Jovita Perez*, 59 CCPA 190, C.A.D. 1065, 464 F. 2d 1043 (1972), are also pertinent. The *Perez* case dealt with Z-beams of United States origin that were made in Mexico into fixed center sills in somewhat similar manner to the fashioning of the beams of the present case into the floating center sills, and then incorporated into railway cars imported into the United States. Claim for free entry of the beams was made under the predecessor statute to item 807.00, TSUS, i.e., paragraph 1615(a), Tariff Act of 1930, as amended, which provided for:

> "Articles, the growth, produce, or manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means * * *."

In reversing the decision of the Customs Court, and holding that the beams had been advanced in value and improved in condition, the Court of Customs and Patent Appeals stated:

> "In the present case, the burning of the slots and the numerous holes in the 613 inch Z beams, the introduction of the camber followed by continuous welding of the pairs of beams together and the many other steps in the process were steps toward incorporating the Z beams in a boxcar in accordance with their intended purpose. The only reasonable inference from the facts is that the beams were advanced in value and improved in condition. That view is reinforced by the presumption that the original determination of the customs officials in denying free entry was correct and involved findings of all facts necessary to support that determination. See *Howland* v. *United States*, 53 CCPA 62, C.A.D. 878 (1966)." 59 CCPA at 195.

The appellate court indicated that the burden was on the importer to show "as a matter of fact, that there has been no advance in value or improvement in condition in the article for which he seeks free duty." *Ibid.* Since the court held that the burden "clearly" had not been met, it reversed the judgment of the trial court.

Notwithstanding the difference between a floating sill and a fixed or stationary sill, and the pertinent statutes, the statements of the court in the *Perez* case are equally applicable here.

In order to prevail, it was incumbent upon plaintiff in this action to prove that the beams "were exported in condition ready for assembly without further fabrication." It was also necessary to establish that they had "not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting."

The testimony of plaintiff's witnesses reveals clearly the numerous steps or processes to which the Z-beams were subjected in Mexico. From the testimony, the inferences are inescapable that they were not ready for assembly without further fabrication, and that they had been advanced in value or improved in condition abroad.

On the evidence of record, the court finds that plaintiff has failed to establish compliance with clauses (a) and (c) of item 807.00, TSUS. Hence, it is the determination of the court that plaintiff is not entitled to the duty allowance provided for in item 807.00 of the tariff schedules.

In view of this holding, it is unnecessary to reach the other questions raised.

Judgment will be entered accordingly.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *February 22, 1977.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P77/5	Richardson, J. February 16, 1977	Paper Novelty Corp.	74-7-01799	Item 653.95 8.5%	Item 688.40 5.5%	U.S. v. L. Batlin & Son, Inc. (C.A.D. 1111)	New York Tree top light sets
P77/6	Landis, J. February 16, 1977	Ataka America, Inc.	73-7-01908	Item 708.71 22% and 21% Item 708.72 25% and 22% Item 708.73 36%, 31% and 27%	Item 708.80 24%, 21% or 18%	Olympus Corp. of America v. U.S. (C.D. 4538)	New York Various parts of microscopes
P77/7	Re, J. February 16, 1977	Selecta, Inc.	74-6-01447	Item 705.85 15% Item 705.86 35%	Item 735.05 7.5%	Agreed statement of facts	New York Gloves specially designed for use in sports

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R77/9	Ford, J. February 14, 1977	Drexel Motors, Inc.	R68/12818	Cost of production	3868.00 DM each for 8 model 1200 (113) Volkswagens; 5085.00 DM each for 8 model 311 Volkswagens; appraised value for each of 18 miscellaneous model Volkswagens	Judgment on the pleadings	New York Volkswagen automobiles
R77/10	Ford, J. February 14, 1977	F & D Trading Corp.	R63/7801	Cost of production	3344.00 DM each for 5 model 113 Volkswagens; 3433.12 DM each for 25 model 117 Volkswagens; appraised value for each of 26 miscellaneous model Volkswagens	Judgment on the pleadings	New York Volkswagen automobiles
R77/11	Landis, J. February 14, 1977	Brown, Alcantar & Brown, Inc., a/c RCA Record Division	R69/12064, etc.	Constructed value	Set forth in schedule C attached to decision and judgment	Brown, Alcantar & Brown, Inc., et al. v. U.S. (A.R.D. 306)	El Paso Phonograph records

Index

U.S. Customs Service

Customs Court

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

U.S. GOVERNMENT PRINTING OFFICE: 1977